

Appl. No. 09/915,865 Attorney Docket No. 81841.0155 (2009-174)  
Amdt. Dated February 25, 2005 Customer No. 26021  
Reply to Final Office Action of November 30, 2004

REMARKS/ARGUMENTS:

Claims 1-6 and 15-26 are canceled without prejudice. Claims 7-14 are pending in the application. Reexamination and reconsideration of the application, as amended, are respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102:

Claims 7-14 stand rejected under 35 U.S.C. §102(b) as being anticipated by Layne et al. (U.S. Patent 5,968,731 A). The Applicant respectfully traverses this rejection.

Claim 7, as amended, is as follows:

An apparatus for mechanical control of an automated immunochemistry or chemistry instrument which has a multiplicity of subsystems for performing immunochemistry or chemistry assays, the apparatus for mechanical control comprising:

a mechanical control system having both object-orient features and real-time features for control of the operations of the multiplicity of subsystems; wherein the subsystems operate on, transform, or transfer passengers; and

a passenger template base class comprising facilities for passenger creation, destruction, enumeration and state recovery.

Applicant respectfully submits that Layne cannot anticipate claim 7, because Layne fails to teach a passenger template base class comprising facilities for passenger creation, destruction, enumeration and state recovery

The Examiner states,

"The Courts have held that the manner of operating an apparatus does not differentiate an apparatus claim from the prior art,

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if the prior art teaches all of the structural limitations of the claim.

See Ex Parte Masham, 2USPQ2d 1647 (BPAI 1987). Furthermore, the Courts have held that apparatus claims must be structurally distinguishable from the prior art in terms of structure, not function."

The Examiner's statement seems to imply that the limitation "wherein a passenger template base class provides facilities for passenger creation, destruction, enumeration and state recovery" of claim 7 is a functional limitation. The Applicant respectfully disagrees. The Applicant believes the facilities necessary for passenger creation, destruction, enumeration and state recovery represent specific structural limitations. However, in order to expedite the prosecution of the instant application, the Applicant amended claim 7 to clarify that the passenger template base class comprises facilities for passenger creation, destruction, enumeration and state recovery.

Layne cannot make claim 7 obvious. Layne has no teaching or suggestion of a passenger base class of any kind, much less a passenger base class comprising facilities for passenger creation, destruction, enumeration and state recovery. It is the discovery of the present invention that the object-oriented mechanical control method and system of the present invention "know" the respective types of the passengers, the respective locations of the passengers with the automated immunochemistry instrument and its subsystems, and the respective states of the passengers. (Applicant's specification, at page 27, lines 6-9). The passenger template base class allows for the polymorphic nature of the passengers. For an automated immunochemistry instrument, such passengers may include; empty vessels, sample vessels, reacting vessels, dilution vessels, reagent packs, samples, and sample tube racks. (Applicant's specification, at page 26, line 22-page 27, line 5). For example, the present invention allows for empty vessels to be transformed into sample vessels when a patient sample is added to them. (Applicant's

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specification, at page 27, lines 10-12). Thus, the present invention offers the advantage that a passenger template base class allows the types and states of the passengers to be known.

In light of the foregoing, Applicant respectfully submits that Layne could not have anticipated or rendered obvious claim 7, because Layne fails to teach or suggest each and every claim limitation. Claims 8-14 depend from claim 7 and cannot be anticipated or rendered obvious for at least the same reasons as claim 7. Withdrawal of these rejections is thus respectfully requested.

Applicant believes the foregoing amendments comply with requirements of form and thus may be admitted under 37 C.F.R. § 1.116(b). In addition, admission is requested under 37 C.F.R. § 1.116(b) as presenting rejected claims in better form for consideration on appeal.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 337-6700 to discuss the steps necessary for placing the application in condition for allowance.

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If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,

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